

March 26, 2003

VIA HAND DELIVERY

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, Second Floor
Boston, Massachusetts 02110

Re: *Western Massachusetts Electric Company, D.T.E. 02-49*
WMECO Reply Brief

Dear Secretary Cottrell:

Please accept this letter as Western Massachusetts Electric Company's ("WMECO" or the "Company") Reply Brief to the Department of Telecommunications and Energy ("Department") in the above-referenced proceeding. WMECO has fully addressed the issues in the proceeding in its Initial Brief (submitted March 18, 2003) and will not repeat those positions here. In addition, WMECO will not address each of the arguments the Attorney General submitted in his Reply Brief (March 21, 2003); these arguments are mostly repetitive of the assertions the Attorney General presented in his Initial Brief of March 3, 2003.¹ In the interests of clarity, however, WMECO responds briefly to four points:

(1) Authorization for a \$105 million financing. WMECO agrees with the Attorney General's recommendation that the Department authorize the Company to issue bonds in an amount up to \$105 million (Attorney General Reply Brief, p. 9). Obviously, the Attorney General sees a benefit to this level of borrowing or he would not support it. Borrowing \$105 million makes sense, however, only if approximately \$50 million is to be used to replace short term debt with permanent debt (Exh. WM-1, p. 2), and approximately the same amount is to be used to finance WMECO's Prior Spent Nuclear Fuel ("PSNF") liability. Exh. WM-2, p. 2.² On the other hand, an issuance of \$105 million is nonsensical if only the short term debt is to be replaced and the PSNF liability is not. As WMECO's witness, Mr. Shoop, testified, "you have to have a use for the capital. You wouldn't overleverage the company for no obvious reason" if there was no use for the proceeds. Tr., p. 125. Moreover, WMECO has explained that simply issuing \$105 million in debt, if not tied in part to approval to finance the PSNF liability, would cause a degradation of its capitalization structure

¹ Failure to address any of the points raised in the Attorney General's Reply Brief should not be interpreted as agreement by WMECO with any such point.

² Issuance costs are also included in the financing request. Exh. WM-1 (Petition), p. 4; Tr., p. 124.

from a rating agency perspective. See, WMECO Initial Brief, pp. 10-11.³ Accordingly, WMECO urges the Department to adopt the Attorney General's recommendation that \$105 million of debt financing be approved and, further, to adopt the only scenario in which a \$105 million borrowing level is reasonable: approximately \$50 million of permanent debt to replace short term debt, and a like amount to finance the PSNF liability.

(2) Financing WMECO's PSNF liability. The Attorney General's stated issues with financing the PSNF liability do not negate the very real advantages to customers of such a step. The Attorney General does not contest the fact that the PSNF funds will be used to pay for nuclear fuel decommissioning in the future. Nor does he contest the fact that such an action will remove the credit that customers now enjoy connected to PSNF. In addition, the Attorney General does not argue with the fact that interest rates are at an historic low and financing the PSNF liability at these low rates is preferable to a financing at presumably higher rates when the PSNF funds are paid. Although the timing of certain of these events is not certain, it is prudent to proceed as requested by the Company. This path provides a certainty for customers rather than betting on a risky future as the Attorney General's short-sighted position would have the Department do. See, WMECO Initial Brief, pp. 8-13.

With respect to the benefits of financing the PSNF liability, the Attorney General apparently remains interested in engaging in 'testimony' on brief pertaining to a \$5 million calculation (Attorney General Reply Brief, p. 4). The Attorney General asks the Department to accept his calculation that has never been discussed by any witness in testimony and has never been the subject of cross-examination. Not satisfied with that level of extra-record testimony, the Attorney General then claims that the \$5 million will apply "each and every year until DOE takes all of the spent fuel" (Attorney General Reply Brief, p. 4). As support for this latter statement, the Attorney General cites his Initial Brief (pp. 6-7), which, not surprisingly, is devoid of any record support for the persistence of any such dollar amount. In fact, contrary to the Attorney General's wild assertion, the record is clear that the benefits of the financing will change from year to year based on a number of factors (e.g., interest rates, general rate case) (Tr., pp. 60, 66-67). WMECO refuses to legitimize the Attorney General's extra-record allegations with additional discussion. The Company is confident the Department will decide this case based on the record, and only the record, before it. WMECO stands by the positions it set forth in its Initial Brief (pp. 16-17).

(3) Derivative transactions. In his Reply Brief, pages 7-9, the Attorney General remains unable to produce any cogent arguments to counter WMECO's request to engage in derivative transactions. The Company's Initial Brief, pp. 18-31, carefully examined and showed the fallacy of each of the Attorney General's positions on derivative transactions. In his reply brief, the Attorney General, no longer mentions several of his earlier, more extreme misconceptions concerning derivative transactions, but, nonetheless, still does not 'get it.' Among other points,

³ The Attorney General's uncited assertion to the contrary on page 7 of his Reply Brief is at odds with the record and simply wrong.

he remains in error concerning evaluation of risk, benefits to customers, the import of SFAS 133, and the substantial expertise of WMECO and its parent, Northeast Utilities, in derivative instruments.

(4) Notice. The Department's Notice of Public Hearing was clear that a funding mechanism (and by direct implication, a fund) was being sought for the PSNF liability. WMECO's Petition, referenced in the Notice of Public Hearing, stated with specificity the trust fund proposal sought. Thus, notice was effectively provided. The Attorney General has enjoyed full due process rights in this proceeding, including the opportunity to issue discovery, cross-examine witnesses and submit briefs on WMECO's proposal to establish a fund for its PSNF liability. Therefore, even if there was an issue with notice, which there is not, such an issue is irrelevant to the Attorney General and he has no reason or standing to complain. Nonetheless, the Attorney General persists in attempting to delay the Department's consideration of the substance of the case with his procedural feint under G.L. c. 164, § 17A.⁴ Attorney General Reply Brief, p. 3.

As WMECO stated in its Initial Brief, G.L. c. 164, §17A, makes sense if it is applied to an investment by an electric or gas company in another entity; it makes little sense, as is the case here, to apply it to a company using ratepayer funds for ratepayer benefit (p. 15). The Department's recent approvals are persuasive in this regard. The Department approved two petitions of WMECO pertaining to the Niantic Bay Fuel Trust without reference to § 17A. *Western Massachusetts Electric Company*, D.T.E. 99-36 (1999); *Western Massachusetts Electric Company*, D.T.E. 98-29 (1998). In addition, the Department approved WMECO's request to establish a trust structure in D.T.E. 00-40 (2001) (securitization) without reference to Section 17A. The Attorney General has not explained why the Department erred in these decisions or why the Department could not view the petition as falling under § 17A on its own initiative.⁵

Respectfully submitted,

WESTERN MASSACHUSETTS ELECTRIC
COMPANY

By its attorneys,

Stephen Klionsky
101 Federal Street, 13th Floor
Boston, Massachusetts 02110
617/748-5140

⁴ Delay must be the goal because, although unnecessary in this instance, any defect could be addressed through additional notice.

⁵ As the Department apparently does with respect to G.L. c. 164, § 16, and as the Attorney General suggested the Department has done in the past with § 17A. Attorney General Reply Brief, n. 3.

and

Leonard Rodriquez
Senior Counsel
107 Selden Street
Berlin, Connecticut
860/665-3881